IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.1 OF 2006
WITH
CIVIL APPLICATION NO.1 OF 2006
WITH
CROSS-OBJECTION (STAMP) NO.6451 OF 2006

Dr. (Mrs.) Saroja Sunil Bukka, residing at Building No.74, Room No.2502, Nehru Nagar, Kurla East, Mumbai – 400 024. ... Appellant

Vs.

Sunil Ramchandra Bukka, residing at Ashapura Apartments, Opp. Kesar Shilp, Near Police Commissioner's Bunglow Lane, Kalyan (West), Thane District. ... Respondent

Mr. S.K. Keswani for the appellant.

Ms. Amarjeet Kaur for the respondent.

CORAM : SMT. RANJANA DESAI & A.P. DESHPANDE, JJ.

DATED : 3RD AUGUST, 2006.

ORAL JUDGMENT:- (Per Smt. Ranjana Desai, J.)

1. The appellant-wife has challenged in this appeal judgment and order dated 20/12/2005 passed by the II[nd] Family Court at Mumbai in M.J. Petition No.A-1518 of 2001. The respondent is the husband. By the impugned order, the learned judge has dismissed the petition filed by the appellant for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955. The learned judge has allowed the counter claim of the respondent for dissolution of marriage. By the impugned order, the marriage between the appellant and the respondent is declared to have been dissolved by a decree

of divorce. The learned judge has directed the respondent to give permanent alimony at Rs.2,000/- per month to the appellant with effect from the date of judgment till she remarries. The said judgment is also challenged by the respondent. The appellant is aggrieved by the dismissal of her petition for restitution of conjugal rights. The respondent has filed cross-objections challenging the impugned order only to the extent it directs him to pay Rs.2,000/- per month to the appellant as permanent alimony.

2. It would be advantageous to state the case of the appellant as well as the respondent as set out by them in their respective pleadings. It is an admitted position that pursuant to the advertisement given by the appellant's father to which the respondent's father responded, the appellant and the respondent got married on 2/12/1998 at Chembur, Mumbai, as per Hindu vedic rights. It is the case of the appellant that the respondent's family told the appellant and her family that the respondent had booked a flat at Syndicate, Kalyan as the house where the respondent was staying was too small to accommodate the members of his family.

3. According to the appellant after the marriage, she resided with the respondent along with his parents at their family house at Kalyan. The respondent thereafter acquired service quarters at Ambivali from M/s. National Rayon Company (NRC) where the respondent was working. The appellant and the respondent resided there from March, 1999 to June, 1999. Thereafter, the respondent got a job in MSEB. He was given service quarters

but the respondent surrendered the service quarters. According to the appellant, the respondent took her to her parents' house, left her there and told her that she would be taken to the matrimonial home after he secures a flat on rental basis. It is the appellant's case that the respondent's father did not allow the respondent to acquire a rented house. He did not allow the respondent to meet her at her parents' house. She went to the matrimonial home but she was asked to go back to her father's house at Kurla. According to her, since July, 1999, the respondent completely withdrew from her society. According to her in October, 2000, she was called by the respondent to Thane Railway Station for reconciliation. From there she was taken to the lawyers office for the purpose of signing divorce papers. She sent a notice to the respondent through her lawyer requesting the respondent to take her back. However, the respondent failed and neglected to take her to the matrimonial home. It is her case that the respondent has deserted her on his own accord; that she is ready and willing to go to the matrimonial home and that the respondent is avoiding to take her back without any reason or sufficient cause. She claimed permanent alimony at Rs.7,000/- per month.

4. The respondent refuted the case of the appellant by filing written statement. He denied that he has deserted the appellant. According to the respondent, the appellant's family had put a condition that after marriage the appellant should be allowed to continue her employment with the Government Hospital at Ghatkopar, Mumbai. The respondent's family agreed in principle but expressed opinion that the appellant should seek employment in the

proximity of the matrimonial home. The appellant's family agreed and in these circumstances the marriage was performed. According to the respondent, right from the beginning, the appellant never wanted to live with the respondent in the matrimonial home. After the marriage, she stayed at the respondent's parents' house at Kalyan for a few days. Thereafter, she went to her parents' house. The respondent had to go to the appellant's parents' house to take her for honeymoon. After they returned from honeymoon, the appellant instead of going to the matrimonial home went to her parents' home and stayed there. The respondent realised that the basic plan of the appellant was not only to separate the respondent from his family, but she wanted the respondent to stay in her parents' house. According to the respondent, the appellant by this behaviour caused mental torture to him. She threatened that she will file complaints against him. The respondent became so apprehensive that he requested his employer NRC to allot him residential premises. Accordingly, residential premises were allotted to him in or about March, 1999 at Ambivali. The appellant came to reside with him at Ambivali. They stayed in the quarters at Ambivali from March, 1999 to June, 1999. During this period, the appellant continued to misbehave. She used to go to work at Ghatkopar and after finishing her work, she used to go to her parents' house at Kurla and used to return to Ambivali at 7.30 to 8.00 p.m. According to the respondent, she would spend about three nights in a week at Kurla. The respondent had to therefore have his food at the factory canteen and on a number of occasion he had to miss his dinner.

5. According to the respondent, during this period, he had applied for a job in MSEB. After his job with MSEB was confirmed, the respondent resigned from NRC. He gave up the Ambivali service quarters of NRC on 29/6/1999. In the intervening period, the respondent and the appellant had no alternative but to return to the respondent's parents' home at Kalyan. According to the respondent, at that time, the appellant expressed her dislike and hatred for his parents. She was determined not to come and reside with the respondent at his parental home at Kalyan. She left the matrimonial home at Ambivali and returned to her parents' home on 24th/25th June 1999. The respondent came to know about this only when he returned home in the evening and found that her baggage was missing. The appellant phoned him and informed that she would rejoin him only if he purchases a flat. Though the appellant misbehaved with him, in order to save the marriage, the respondent tried to get residential premises from MSEB. He managed to get quarters from MSEB situated at Padgha, which is on Mumbai - Nasik highway. However, the appellant refused to join him on the ground that she would not be able to attend to her job at Ghatkopar if she stays at Padgha. The respondent then realised that the appellant had no interest in returning to the matrimonial home. According to the respondent, the appellant has withdrawn herself from her matrimonial obligations without any cause or reason. It is the respondent's case that the appellant is guilty of having abandoned all her matrimonial duties. She has caused severe mental cruelty to him by refusing to live with him in the matrimonial home. She has unjustifiably deserted him. The respondent, therefore, filed a counter claim for

decree of divorce under section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955.

6. With these pleadings, the parties went to the trial. The appellant and the respondent examined themselves in support of their respective cases. Upon perusing the evidence on record, the trial court came to a conclusion that the appellant has failed to prove that the respondent has deserted her. The trial court further held that the respondent has proved that the appellant has deserted him and has treated him with cruelty. The trial court dismissed the appellant's petition for restitution of conjugal rights. It decreed the counter claim of the respondent and declared that the marriage between the appellant and the respondent stands dissolved by a decree of divorce. The trial court ordered the respondent to pay permanent alimony to the appellant at the rate of Rs.2,000/- per month from the date of the order till she remarries. The said judgment and order is challenged in this appeal.

7. Mr. Keswani, the learned counsel for the appellant contended that the trial court was wrong in dismissing the appellant's petition. He submitted that the evidence on record clearly indicates that it is the respondent who without any reasonable cause deserted the appellant. He submitted that if the appellant wanted to desert the respondent she would not have filed a petition for restitution of conjugal rights. He submitted that to a pointed question whether while leaving the NRC quarters, the respondent brought with him the belongings of the appellant to his parent's house, the respondent replied in

the negative and stated that he kept them in NRC quarters of his friend. The learned counsel submitted that this conduct establishes that the respondent never wanted to stay with the appellant. He submitted that the case of cruelty is not established by the respondent and, therefore, the learned judge was wrong in dissolving the marriage.

8. The learned counsel for the respondent on the other hand contended that the evidence on record establishes that the respondent had made all possible efforts to set up a separate house. He tried to persuade the appellant to join him at Ambivali and Padgha. But the appellant did not join him because she wanted to be close to her parents' house. The learned counsel contended that in the evidence of the appellant there are clinching admissions which disprove her case that the respondent deserted her and therefore this court should confirm the trial court's order.

9. We have carefully read the pleadings and the evidence of the parties. The appellant has submitted her affidavit of evidence. In her affidavit the appellant has reiterated the averments made in the petition, which we have quoted hereinabove. She has reiterated that prior to the marriage, there was meeting between her family and the respondent's family and the respondent's family had informed her family that the respondent had booked a flat at Syndicate, Kalyan. It is suggested that the appellant got married to the respondent on the basis of this promise. The appellant was cross-examined. In the cross-examination, she has reiterated that the respondent's father had

told her family that the respondent had booked a flat. It was under construction at Syndicate, Kalyan (West). According to her, the respondent's father had painted a rosy picture. She has categorically stated in her cross-examination that she had agreed to marry the respondent because he had booked a flat. She has further stated that she was not willing to stay in the matrimonial home because it was too small to accommodate nine members of the family. She has further stated that prior to the marriage, her parents had visited the residential premises of the respondent. According to her, neither she nor her parents told the respondent or his parents that they did not like the house of the respondent because they were told that the respondent had already booked a flat and that the respondent would shift there.

10. From this evidence, it is clear that the appellant admits that she got into matrimony only because the respondent was to shift to the new flat. Her main object was to stay separately in a new flat. She has admitted that she was not willing to stay in the respondent's father's house because it was too small. The appellant and her family admittedly did not like the house of the respondent's father. We find in these clinching admissions a definite and clear apathy shown by the appellant towards staying with the respondent in the matrimonial home.

11. We find the appellant's approach to be totally unreasonable. The appellant has admitted that her parent's house at Navy Nagar, Kurla consists of only one room and kitchen. She has admitted that four members of her

father's family were residing in that flat. Therefore, the appellant is not used to a very palatial house. She has described the respondent's father's house as consisting of “one bed room, hall and kitchen and the gallery converted in small room”. Therefore, the dislike for this house expressed by the appellant in her evidence depicts a very unreasonable and adamant approach.

12. It is pertinent to note that though in the cross-examination, at one stage, she has stated that after the honeymoon she did not go to her parents' house, at another place, she has admitted that after honeymoon she stayed with her parents but that was not against the wishes of the respondent. Therefore, the respondent's case that the appellant was keen on staying in her father's house after marriage, is substantiated. It is also pertinent to note that the appellant has admitted in her evidence that at the matrimonial home at Kalyan, she hardly resided for a month. She has further admitted that she asked the respondent to take quarters at Chembur or at any other convenient place instead of the quarters at Padgha. She has further stated that she asked the respondent to get himself transferred either to Chembur or Bhandup because those places were close to the residence of her parents. This further substantiates the case of the respondent that the appellant was keen on being with her parents rather than settling down in the matrimonial home with the respondent.

13. The appellant has admitted that after the death of her father, the respondent had come to her father's house. She has further admitted that

before going to Ambivali, the respondent had been to her parent's house and she accused him that he had come to take away her mangalsutra. These admissions also lend support to the respondent's case that though he made efforts to save the marriage, the appellant by her adamant approach caused mental cruelty to him and made it difficult for the marriage to work. From her cross-examination, it is apparent that the appellant had no desire to stay with the respondent either at the respondent's parents' house at Kalyan or at Ambivali or at Padgha. All that she wanted was to stay somewhere near her parent's house at Chembur or Bhandup.

14. We have also gone through the evidence of the respondent. In the examination in chief, the respondent has reiterated all that he has averred in his written statement. He has stated that the respondent stayed in the matrimonial home after marriage for a few days. He had to go to her parents' house at Kurla to take her for honeymoon because she was staying there. Even after they came back from honeymoon, she went to stay at her parents' house. According to him, he phoned her several times requesting her to come back but she refused to do so. She came back just for about 15 days with inadequate preparation to stay for a longer period. In order to save the marriage, the respondent shifted to the quarters at Ambivali. The respondent and the appellant stayed there from February, 1999 till June, 1999. But their actual cohabitation was only for a month. During this period also, the appellant continued to visit her parents' house at Kurla. She used to come to Ambivali at about 7.30 or 8.00 at night. In a week, she used to spend three

nights with her parents. On several occasions, the respondent did not get dinner at home. After sometime, he got a job with MSEB. He was, therefore, compelled to give up the NRC quarters at Ambivali on 29/6/1999. During the interregnum, they had no alternative but to return to his parents' house at Kalyan. However, the appellant made it clear that she did not want to reside with him at his parents' house at Kalyan though they were to stay there temporarily. According to the respondent, on 24/25th June 1999, the appellant left the matrimonial home at Ambivali and returned to her parents' home. When he secured the quarters of MSEB situated at Padgha, he informed the appellant about it and requested her to come and stay there. She refused to join him on the ground that it was not convenient for her to travel to Ghatkopar from there. The respondent has stated that the appellant had willfully and deliberately withdrawn herself from his society without any rhyme and reason. He has stated that the appellant is guilty of having abandoned all her matrimonial duties and of having caused severe mental trauma and cruelty to him which entitled him to a decree of divorce. In the cross-examination, the respondent has stood firm. We are of the opinion that the evidence of the respondent inspires confidence. The appellant has not been able to make any dent in the respondent's evidence by cross-examining him.

15. We find no substance in the contentions of the learned counsel for the appellant that because the appellant filed a petition for restitution of conjugal rights, it cannot be said that she has deserted the respondent or she did not

want to live with him in the matrimonial home. We find from the evidence that the appellant has consistently avoided staying in the matrimonial home. She did not like the respondent's parents' house. She did not want to live at Ambivali or at Padgha. She wanted the respondent to buy a home near her parents' home. She wanted the respondent to live life on her terms. She never wanted to compromise. Therefore, filing of petition for restitution of conjugal rights is not a point in favour of the appellant. We are also not impressed by the contention that because the respondent has admitted that when he left NRC quarters he kept the appellant's luggage with his friend, it must be concluded that he had no intention to bring the appellant to his house. The luggage could have kept behind because it might not have been convenient for the respondent to carry it with him. From this, no inference can be drawn that the respondent did not want the appellant to come and stay in the matrimonial home.

16. Having perused the evidence on record, we have no manner of doubt that the learned judge has rightly held that the appellant has caused mental trauma and agony to the respondent and she has failed to prove that the respondent deserted her. In our opinion, the respondent made several efforts to save the marriage. He separated from his parents and secured quarters from NRC at Ambivali. Thereafter, he secured quarters from MSEB at Padgha. The appellant was never willing to join him either at Ambivali or at Padgha. The appellant has admitted that she wanted him to secure a flat near her parent's house. This depicts a very unreasonable adamant and

uncompromising approach. The appellant has admitted that she told the respondent to stay separate from his parents. But she has added that she did so to avoid the harassment of the respondent's sisters. However, the appellant has not given any particulars of the alleged harassment. The learned judge, therefore, cannot be faulted for having dismissed the petition for restitution for conjugal rights and for having decreed the counter claim for dissolution of marriage. The appellant and the respondent have not cohabited for the last about six years. The marriage has irretrievably broken down. The impugned judgment and order must, therefore, be confirmed to the extent it grants a decree of divorce and dismisses the petition for restitution of conjugal rights.

17. So far as the cross-objections filed by the respondent are concerned, the same are restricted only to the question of alimony. The learned counsel for the respondent contended that the appellant is a qualified doctor. She is serving and earning well. The evidence on record has established that the appellant had no desire to stay with the respondent in the matrimonial home. She has treated the respondent with cruelty. In the circumstances, the appellant is not entitled to any alimony. However, on instructions from the respondent, who is present in the court, the learned counsel has stated that without prejudice to his rights and contentions, the respondent is willing to give a sum of Rs.1,00,000/- to the appellant. She states that the respondent may be allowed to pay the said amount in instalments. The learned counsel has stated that a sum of Rs.50,000/- will be paid within two weeks from today

and the remaining Rs.50,000/- will be paid within three months thereafter. We feel that this is a very reasonable offer. It is, therefore, not necessary for us to go into the question whether, in law, the appellant is entitled to alimony. In the circumstances, we pass the following order :

O R D E R

18. Family Court Appeal No.1 of 2006 is dismissed. The impugned judgment and order to the extent to which it dismisses the petition for restitution of conjugal rights and grants decree for dissolution of marriage of the appellant and the respondent, it is confirmed. The impugned judgment and order to the extent it directs payment of permanent alimony at Rs.2,000/- per month to the appellant is modified. The respondent shall pay a sum of Rs.1,00,000/- to the appellant as full and final settlement of the appellant's claim towards alimony without prejudice to his contention that the appellant is not entitled to any alimony. Out of the said sum of Rs.1,00,000/-, a sum of Rs.50,000/- will be deposited by the respondent in this court within a period of two weeks from today. On such deposit being made, the Registrar General of this court shall allow the appellant to withdraw it without security. So far as the rest of the amount of Rs.50,000/- is concerned, the respondent shall deposit the same in this court within three months thereafter and shall inform the appellant accordingly. On such deposit being made, the Registrar General of this court shall permit the appellant to withdraw the said sum without security. The appeal, civil application as well as the cross-objections

are disposed of in the aforestated terms.

19. At this stage, the appellant, who is present in the court in person, states that the operation of this judgment be stayed for a period of 12 weeks. In the circumstances of the case, the prayer is rejected.

[SMT. RANJANA DESAI, J.]

[A.P. DESHPANDE, J.]